

**ADOPTED REGULATION OF THE BUREAU OF SERVICES
TO THE BLIND AND VISUALLY IMPAIRED OF THE
REHABILITATION DIVISION OF THE DEPARTMENT OF
EMPLOYMENT, TRAINING AND REHABILITATION**

LCB File No. R228-05

Effective May 4, 2006

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-51, NRS 426.560 and 426.670.

A REGULATION relating to blind persons; making various changes governing the operation of vending facilities; making technical corrections relating to the duties of the Administrator of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation; and providing other matters properly relating thereto.

Section 1. Chapter 426 of NAC is hereby amended by adding thereto a new section to read as follows:

“Trainee” means a person who is enrolled in the training program for operators offered by the Bureau pursuant to NAC 426.105.

Sec. 2. NAC 426.010 is hereby amended to read as follows:

426.010 As used in NAC 426.010 to 426.500, inclusive, unless the context otherwise requires, the words and terms defined in NAC 426.015 to 426.055, inclusive, *and section 1 of this regulation* have the meanings ascribed to them in those sections.

Sec. 3. NAC 426.040 is hereby amended to read as follows:

426.040 “Net proceeds” means the amount of money which remains of the gross income after an operator *or trainee* has deducted the ordinary and necessary expenses of his business, excluding the money which he is required to set aside pursuant to NAC 426.230.

Sec. 4. NAC 426.042 is hereby amended to read as follows:

426.042 “Net profit” means the amount of money which remains in the net proceeds after an operator *or trainee* deducts the money which he is required to set aside pursuant to NAC 426.230.

Sec. 5. NAC 426.067 is hereby amended to read as follows:

426.067 For the purposes of NAC 426.010 to 426.500, inclusive, an operator *or trainee* shall be deemed an independent contractor.

Sec. 6. NAC 426.070 is hereby amended to read as follows:

426.070 The Bureau will furnish a copy of NAC 426.010 to 426.500, inclusive, to each operator *and trainee* and to each person who is licensed to operate a vending facility in the medium of his choice.

Sec. 7. NAC 426.080 is hereby amended to read as follows:

426.080 1. The Nevada Committee of Blind Vendors is hereby created. The Committee consists of operators who are in good standing with the Bureau and are elected in the manner prescribed in the bylaws of the Committee.

2. The operators in this State shall adopt bylaws to govern the Committee. The adoption must be by a majority of the operators who are present at the meeting to adopt the bylaws and vote upon the adoption. The bylaws are not effective until they are approved by the ~~Chief~~ *Administrator or his designee*. The bylaws must prescribe:

(a) The number of members on the Committee;

- (b) The method of electing the members;
- (c) The method of selection of the officers of the Committee;
- (d) Other matters essential to the proper functioning of the Committee; and
- (e) The procedure for the annual meeting of the Committee.

3. The members of the Committee are elected each even-numbered year by all the operators who are present at the meeting to elect members and vote upon the election of members. The members serve a term of 2 years, and until their successors have been elected and the Bureau determines that they are qualified to serve.

4. The Committee shall:

(a) Hold a meeting annually ~~[-]~~.

~~—(b) Abide by~~ *or more frequently, if necessary.*

(b) Comply with the provisions of chapter 241 of NRS.

Sec. 8. NAC 426.085 is hereby amended to read as follows:

426.085 The Nevada Committee of Blind Vendors shall:

- 1. Participate with the Bureau in the development of policy and make recommendations on issues which affect the program for vending facilities administered by the Bureau;
- 2. Receive grievances from operators and assist the operators in the presentation of those grievances to the Bureau;
- 3. Participate with the Bureau in a program which is designed to transfer and promote operators;
- 4. Participate in the development of training programs for operators ~~[-; and]~~ *and trainees;*
- 5. Sponsor meetings to provide useful information to operators ~~[-]~~ *and trainees; and*

6. *Make recommendations to the Bureau concerning disciplinary actions against operators.*

Sec. 9. NAC 426.105 is hereby amended to read as follows:

426.105 A blind person may be enrolled in the training program for operators offered by the Bureau if the ~~{Chief}~~ *Administrator or his designee* determines that the person:

1. Meets the requirements of age and citizenship for a license to operate a vending facility;
2. Is physically and emotionally qualified to operate a vending facility, based upon evaluations of the medical, psychological and vocational condition of the person which are on file with the Bureau or submitted to the Bureau for purposes of the assessment;
3. Possesses the skills in communications, mathematics, mobility, personal grooming and independent living which are necessary for the performance of the duties and responsibilities of an operator;
4. Possesses the ability for self-employment;
5. Possesses the ability to maintain good relations with customers, the Bureau and the agency which controls the premises where the vending facility is located;
6. Would benefit from and complete the program; and
7. Upon completion of the program, would be qualified to operate a vending facility.

Sec. 10. NAC 426.135 is hereby amended to read as follows:

426.135 1. A license to operate a vending facility automatically terminates if the licensee:

- (a) Ceases to be a citizen of the United States;
- (b) Ceases to be a blind person; or
- (c) Surrenders his license to the Bureau.

2. If a licensee submits his resignation as an operator to the Bureau, his license terminates on the date established by the ~~[Chief.]~~ *Administrator or his designee.*

Sec. 11. NAC 426.140 is hereby amended to read as follows:

426.140 1. Each of the following acts by an operator constitutes a ground for suspension or revocation of his license:

(a) Abandonment of a vending facility. A vending facility shall be deemed to be abandoned if the operator has been absent from the vending facility without the authorization of the Bureau and the facility has been closed for 3 consecutive working days or more.

(b) Failure to operate a vending facility in accordance with:

- (1) Any applicable law or regulation;
- (2) The operating agreement; or
- (3) The permit given by the public agency or private person who has control of the premises where the vending facility is located.

(c) Failure to maintain the equipment that is located at his vending facility in good condition.

(d) Misconduct, including, without limitation:

- (1) Fraud, misappropriation or conversion.
- (2) Use of alcoholic beverages or illicit drugs while on duty.
- (3) Embezzlement.
- (4) Submission of a false report to the Bureau.
- (5) Failure to submit to a medical, psychological, ophthalmological or other examination when requested to do so by the Bureau. The Bureau will pay for the cost of such an examination.
- (6) Other behavior that seriously jeopardizes the operation of the vending facility.

(e) Failure to pay obligations incurred in the operation of the vending facility when payments on those obligations are due.

(f) Failure to pay to the Bureau when due the money that he is required to pay pursuant to NAC 426.230 or 426.235.

(g) Failure to obtain the insurance required by the operating agreement, or to pay the insurance premiums when they become due.

(h) Failure to be ~~physically present at~~ *actively involved in the operation of* the *vending* facility pursuant to NAC 426.395.

(i) Failure to maintain the records of the business operations of the vending facility that he is required to maintain pursuant to NAC 426.250.

(j) Refusal to permit the inspection, review or audit of the records of the business operations of the vending facility by authorized representatives of the Bureau.

(k) Failure or refusal to comply with the requirements of continuing education or training, or to receive counseling or vocational rehabilitation pursuant to NAC 426.123.

2. The ~~Chief~~ *Administrator or his designee* may suspend or revoke the license of an operator if ~~he~~ *the Administrator or his designee* determines that the operator does not possess the personal attributes which were required for his enrollment in the training program for operators offered by the Bureau.

Sec. 12. NAC 426.145 is hereby amended to read as follows:

426.145 If the Bureau determines that the conduct of an operator requires suspension or revocation of his license, or the *suspension or* termination of his operating agreement before the expiration of the period specified in the agreement, the Bureau will provide to the operator an opportunity to present evidence to the Bureau which tends to show that he is in compliance with

all requirements for retention of his license or operating agreement through the process for review of administrative complaints set forth in NAC 426.416 to 426.475, inclusive. The Bureau will provide to the operator notice of that opportunity and will set forth in the notice the grounds for the suspension or revocation of his license, or *the suspension or* termination of his operating agreement.

Sec. 13. NAC 426.150 is hereby amended to read as follows:

426.150 1. Except as otherwise provided in subsection 2, a blind person who is licensed to operate a vending facility may apply to operate a particular vending facility.

2. Except as otherwise provided in subsection 3, a blind person who is licensed to operate a vending facility may not apply to operate a particular vending facility if:

(a) He has managed or operated a facility for less than 6 months; or

(b) He fails to comply with the requirements for the operation of the vending facility that are set forth in the notice of vacancy for the facility.

3. The ~~{Chief}~~ *Administrator or his designee* may waive the limitations set forth in subsection 2 if he determines that there is not a sufficient number of eligible applicants for the operation of the vending facility.

Sec. 14. NAC 426.165 is hereby amended to read as follows:

426.165 If a person who has been selected to operate a vending facility withdraws from consideration or refuses to execute, within a prescribed time, an operating agreement, he is disqualified from selection as an operator of that facility. Upon such a disqualification, the ~~{Chief}~~ *Administrator or his designee* may:

1. Offer the agreement to the applicant who received the next highest rank for selection.
2. Reinitiate the application process.

3. Select an interim operator for a specified period. The interim operator shall comply with the provisions of NAC 426.010 to 426.500, inclusive.

Sec. 15. NAC 426.180 is hereby amended to read as follows:

426.180 1. An operating agreement grants to the operator, for a specified period, the right to use a vending facility and the equipment included with the vending facility.

2. The Bureau will offer an operating agreement and all documents relating to the agreement to a person who has been selected to operate a vending facility. The person who is selected must sign the operating agreement before he takes possession of the vending facility.

3. Except as otherwise provided in this subsection, an operating agreement terminates automatically upon expiration of the period specified in the agreement. The Bureau may, in accordance with NAC 426.145, terminate an operating agreement before the expiration of the specified period if the operator fails to comply with the provisions of the operating agreement, chapter 426 of NRS or NAC 426.010 to 426.500, inclusive. ~~[The]~~ *In lieu of terminating an operating agreement, the* Bureau may suspend an operating agreement for *not more than* 90 days. ~~[if an operator has made continuous clerical errors on reports that he is required to submit to the Bureau. The]~~ *If the Bureau suspends an operating agreement, the* operator may continue to operate his vending facility during the ~~[90-day period, but shall cooperate with the Bureau to improve the reports which he submits.]~~ *period in which the agreement is suspended if the operator agrees to cooperate with the Bureau to establish and carry out a corrective plan of action for the vending facility.*

Sec. 16. NAC 426.194 is hereby amended to read as follows:

426.194 An operator *or trainee* shall obtain all licenses and permits which are required for the operation of a vending facility, including, but not limited to, a sales tax permit and local

business license. The operator *or trainee* shall pay all fees related to the issuance or renewal of each license or permit. The operator *or trainee* shall display each license or permit in a prominent location at the vending facility.

Sec. 17. NAC 426.201 is hereby amended to read as follows:

426.201 An operator *or trainee* shall, unless otherwise required by statute:

1. Assume liability for his willful or negligent acts, or the willful or negligent acts of his employees or agents, that cause injury or damage to persons or property; and
2. Hold the Bureau harmless for any such acts.

Sec. 18. NAC 426.215 is hereby amended to read as follows:

426.215 The Bureau may require the operator *or trainee* to provide to the Bureau a bond or other security of a type and amount determined by the Bureau.

Sec. 19. NAC 426.222 is hereby amended to read as follows:

426.222 A payment required by NAC 426.010 to 426.500, inclusive, must be drawn on the business account of an operator ~~H~~ *or trainee*. A payment that is made, other than a payment for a business deduction, must be recorded as a personal expense on the monthly balance sheet maintained by the operator ~~H~~ *or trainee*.

Sec. 20. NAC 426.224 is hereby amended to read as follows:

426.224 1. Except as otherwise provided in subsection 5, if a payment or report required by NAC 426.010 to 426.500, inclusive, is not received by the Bureau on the date it is due, the Bureau will assess a penalty of \$50 or 15 percent of the amount due, whichever is greater. The Bureau will determine whether a payment or report is received by the Bureau on the date that it is due in accordance with NRS 238.100.

2. The Bureau will mail to the last known address of the operator *or trainee* by certified mail, return receipt requested, or personally deliver to the operator ~~{Chief}~~ *or trainee*, notice that a penalty has been assessed.

3. A penalty must be paid not more than 30 days after the operator *or trainee* receives notice of the penalty. Except as otherwise provided in subsection 5, if a penalty is not paid, the Bureau will assess an additional penalty of \$50 or 15 percent of the amount due, whichever is less, excluding the amount due for the first penalty.

4. If, in a 1-year period, three reports, payments or penalties are not submitted to the Bureau when they are due, the Bureau may terminate the operating agreement between the Bureau and the operator without prior notice to the operator.

5. The ~~{Chief}~~ *Administrator or his designee* may waive the assessment of a penalty pursuant to this section if the operator *or trainee* submits a request for a waiver which includes the reasons for the late payment, report or penalty.

Sec. 21. NAC 426.225 is hereby amended to read as follows:

426.225 1. The ~~{Chief}~~ *Administrator or his designee* shall assign to an operator *or trainee* revenue which is accrued from vending machines that are in direct competition with the vending facility of the operator ~~{Chief}~~ *or trainee*.

2. The ~~{Chief}~~ *Administrator or his designee* may assign to an operator *or trainee* commissions which are accrued from vending machines that are not in direct competition with the vending facility of the operator *or trainee* to supplement the income of the operator *or trainee* for not more than 6 months. The Bureau will develop and publish a policy for determining the amount of commissions that may be assigned pursuant to this subsection.

3. For the purpose of this section, if vending machines are not easily accessible to the employees in the building occupied by the vending facility of the operator ~~or~~ *or trainee*, the machines are not considered to be in direct competition with the vending facility of the operator ~~or~~ *or trainee*.

Sec. 22. NAC 426.230 is hereby amended to read as follows:

426.230 1. To provide the money that is necessary for the administration of the program for vending facilities, each operator *or trainee* shall set aside money, to be deposited by the Bureau in the Business Enterprise Account for the Blind, from the monthly net proceeds of his business in accordance with the following table:

Net Proceeds of Business	Amount to Be Set Aside
\$0 to \$1,100.....	2 percent of net proceeds
1,101 to 1,350.....	\$25 plus 5 percent of net proceeds over \$1,100
1,351 to 1,800.....	\$35 plus 10 percent of net proceeds over \$1,350
1,801 to 2,250.....	\$80 plus 15 percent of net proceeds over \$1,800
2,251 to 2,800.....	\$150 plus 20 percent of net proceeds over \$2,250
2,801 to 3,600.....	\$260 plus 30 percent of net proceeds over \$2,800
3,601 to 5,000.....	\$500 plus 40 percent of net proceeds over \$3,600
Over \$5,000.....	\$1,045 plus 50 percent of net proceeds over \$5,000}
 <i>\$0 to \$999.....</i>	 <i>1 percent of net proceeds</i>
<i>1,000 to 1,499.....</i>	<i>\$15 plus 2 percent of net proceeds over \$999</i>

1,500	to	2,099.....	\$25 plus 5 percent of net proceeds over \$1499
2,100	to	2,799.....	\$55 plus 10 percent of net proceeds over \$2,099
2,800	to	3,399.....	\$125 plus 15 percent of net proceeds over \$2,799
3,400	to	4,499.....	\$215 plus 20 percent of net proceeds over \$3,399
4,500	to	5,699	\$435 plus 25 percent of net proceeds over \$4,499
5,700	to	6,899	\$735 plus 30 percent of net proceeds over \$5,699
6,900	to	8,999	\$1,095 plus 35 percent of net proceeds over \$6,899
9,000	to	13,999	\$2,000 plus 40 percent of net proceeds over \$8,999
14,000	to	19,999	\$4,000 plus 45 percent of net proceeds over \$13,999
Over		\$20,000.....	\$7,000 plus 50 percent of net proceeds over \$20,000

2. The ~~{Chief,}~~ *Administrator or his designee*, after consultation with the Nevada Committee of Blind Vendors, shall periodically review the table in subsection 1.
3. *Except as otherwise provided in subsection 4, if the monthly net proceeds of the business of an operator or trainee are less than zero, the amount which expenses exceed income may be carried forward for not more than 2 months and deducted from the net proceeds for those months to determine the amount of money required to be set aside pursuant to subsection 1 for those months. The operator or trainee may carry forward that amount for more than 2 months if the operator or trainee obtains prior written approval from the Bureau.*
4. The ~~{Chief,}~~ *Administrator or his designee*, after consultation with the Nevada Committee of Blind Vendors, may waive or reduce the amount of money required to be set aside pursuant to subsection 1 for a time prescribed by the ~~{Chief,}~~ *Administrator or his designee*. If the ~~{Chief,}~~ *Administrator or his designee*, after consultation with the Nevada Committee of

Blind Vendors, decides to waive or reduce this amount of money, the ~~Chief~~ *Administrator or his designee* shall notify each operator *or trainee* for whom the amount is being waived or reduced on or before the last day of the month for which the amount is waived or reduced.

Sec. 23. NAC 426.235 is hereby amended to read as follows:

426.235 1. The Bureau may advance money to an operator *or trainee* from the Business Enterprise Account for the Blind to purchase initial stock of merchandise, supplies and equipment that are necessary to begin the operation of a vending facility. The operator *or trainee* shall execute a promissory note for the amount to be repaid to the Bureau. The repayment must be made in monthly installments, based upon the adjusted net proceeds of the business of the operator *or trainee* in accordance with the following table:

Adjusted Net Proceeds	Installment Required
\$0 to \$1,100.....	10 percent of the amount
1,101 to 2,000.....	\$100 plus 15 percent of the adjusted net proceeds over \$1,000
2,001 to 3,000.....	\$250 plus 20 percent of the adjusted net proceeds over \$2,000
3,001 to 4,000.....	\$450 plus 30 percent of the adjusted net proceeds over \$3,000
4,001 to 5,000.....	\$750 plus 40 percent of the adjusted net proceeds over \$4,000
Over \$5,000.....	\$1,150 plus 50 percent of the adjusted net proceeds over \$5,000

2. The Bureau may advance money to an operator *or trainee* from the Business Enterprise Account for the Blind in exchange for a promissory note to ensure the continued operation of an

existing vending facility. ~~{Such an}~~ **The** advance must be repaid by the operator **or trainee** in accordance with the terms and conditions of the promissory note.

3. As used in this section, “adjusted net proceeds” means the amount of money that remains of the gross income after an operator **or trainee** has deducted the ordinary and necessary expenses of his business and includes, without limitation, the amount of money set aside pursuant to NAC 426.230.

Sec. 24. NAC 426.245 is hereby amended to read as follows:

426.245 1. The Bureau will account for the money set aside and collected by the Bureau from the operators **and trainees** in accordance with generally accepted principles of accounting.

2. In addition to the purposes authorized by NRS 426.675, the Bureau will use money from the Business Enterprise Account for the Blind for:

(a) Payment of the costs incurred for management of the program for vending facilities administered by the Bureau, including the expenses of the Nevada Committee of Blind Vendors.

(b) If money is available in the Account, reimbursement of an operator **or trainee** for the payment of a premium on a policy of insurance which the operator **or trainee** is required to maintain if, in the determination of the ~~{Chief,}~~ **Administrator or his designee**, the reimbursement is consistent with NRS 426.640.

Sec. 25. NAC 426.250 is hereby amended to read as follows:

426.250 Each operator **or trainee** shall maintain complete books and records of account for his business on the basis of calendar years in accordance with generally accepted standards for business accounting. The books and records must accurately reflect all receipts and disbursements. The operator **or trainee** shall use the method of accounting approved by the Bureau.

Sec. 26. NAC 426.255 is hereby amended to read as follows:

426.255 Each operator *or trainee* shall submit to the Bureau, on a form prescribed by the Bureau, a monthly report of the business operations of his vending facility. The monthly report must be based on a calendar month.

Sec. 27. NAC 426.265 is hereby amended to read as follows:

426.265 1. Each operator *or trainee* shall maintain the records, correspondence and other documents relating to his business operation ~~[in the area where the vending facility is located]~~ *at a location in this State* and make the records available to an authorized representative of the Bureau, with or without notice, for inspection, audit or other purpose. Upon issuance of a receipt for records, the operator *or trainee* shall surrender his records to a representative of the Bureau for audit. The receipt must specify the date on which the records must be returned to the operator *or trainee* and include the signature of the representative of the Bureau who receives the records. After an audit by the Bureau, an operator *or trainee* shall, if requested by the Bureau, correct the records in accordance with the instructions of the Bureau. Each operator *or trainee* shall maintain the records of his business operation for 5 years after the end of the calendar year covered by the records.

2. The Bureau may request any records, correspondence or other documents of an operator *or trainee* that are necessary for the operation or management of the vending facility or the performance of the operator ~~H~~ *or trainee, including, without limitation, records of any business in which an operator or trainee or any member of the immediate family of the operator or trainee has a financial interest in the ownership of the business. As used in this subsection, "immediate family" has the meaning ascribed to it in NAC 284.5235.*

Sec. 28. NAC 426.267 is hereby amended to read as follows:

426.267 1. The Bureau will:

(a) Cause an audit to be conducted biennially for each vending facility with gross revenues of \$150,000 or more; and

(b) Enter into a contract with an accounting firm selected by the Bureau to perform the audits.

2. The ~~{Chief,}~~ *Administrator or his designee*, in consultation with the Nevada Committee of Blind Vendors, shall develop policies and procedures for the conduct of the audit.

3. The Bureau will pay for the audit from money in the Business Enterprise Account for the Blind.

Sec. 29. NAC 426.270 is hereby amended to read as follows:

426.270 1. Each operator *or trainee* shall establish and maintain a checking account for his business. The account must be in a commercial bank which is authorized to do business in this state and offers electronic access to banking services. The operator *or trainee* shall not commingle his business and personal money in the business checking account.

2. Each operator *or trainee* shall maintain cash in an amount which is sufficient to pay all monthly obligations of his vending facility without diminishing the net worth of his business.

3. If an operator maintains a negative balance in his checking account or issues a check without sufficient money in the checking account, the Bureau may terminate his operating agreement.

Sec. 30. NAC 426.275 is hereby amended to read as follows:

426.275 All income which is earned from the operation of a vending facility must be deposited in the business checking account of the operator ~~{}~~ *or trainee*.

Sec. 31. NAC 426.280 is hereby amended to read as follows:

426.280 The operator *or trainee* shall pay his business expenses and the money owed to the Bureau by a check drawn on his business checking account. ~~He~~ *The operator or trainee* may use the money in his business checking account to reimburse himself for any expenses of the business which he originally paid from his personal money if he maintains documents which relate to those payments, including, but not limited to, invoices and receipts, in accordance with the generally accepted standards for business accounting.

Sec. 32. NAC 426.285 is hereby amended to read as follows:

426.285 Unless the ~~Chief~~ *Administrator or his designee* provides prior written approval to an operator ~~H~~ *or trainee*, ordinary and necessary expenses of the business of an operator *or trainee* do not include:

1. Expenses for accounting services not related to the business.
2. Attorney's fees and related expenses.
3. Charges for bank overdraft or return of checks.
4. Charges for the use of credit cards except as permitted by NAC 426.010 to 426.500, inclusive.
5. Costs of commuting to and from work, including parking fees, for the operator *or trainee* or his employees.
6. Contributions or gifts to organizations or customers.
7. Costs of aids, appliances or other equipment furnished to the operator *or trainee* through the program for vocational rehabilitation offered by the Bureau.
8. Costs of replacing merchandise which is destroyed because of spoilage, theft or other circumstances.
9. Costs of maintenance, replacement or repair of equipment which is owned by the Bureau.

10. Costs of maintenance, replacement or repair of equipment which is owned by the operator *or trainee* and used at the vending facility.
11. Costs of markup of an item of merchandise which is over the actual cost of the item, if the item was purchased from a firm and the markup directly or indirectly benefits the operator ~~H~~ *or trainee*.
12. Allowances for employees' meals.
13. Penalties paid to an agency which imposes taxes or issues a license.
14. Personal expenses, including, but not limited to:
 - (a) Charges for personal clothing.
 - (b) Premiums for health, medical or disability insurance for the operator *or trainee* or his family.
 - (c) Payments for personal income tax, including payments for estimated taxes.
 - (d) Premiums for life insurance or payments for a retirement program for the operator ~~H~~ *or trainee*.
 - (e) Any other expenses which are personal.
15. The purchase price of or rental payments for equipment which has not been authorized by the Bureau.
16. Payments to the Bureau pursuant to a promissory note for any money advanced to establish a vending facility.
17. Travel expenses.
18. Depreciation of the equipment owned by the operator ~~H~~ *or trainee*.
19. Expenses for rent or utilities at a location other than the facility.
20. Losses incurred for an extension of credit that was not approved by the Bureau.

Sec. 33. NAC 426.290 is hereby amended to read as follows:

426.290 An operator *or trainee* shall conduct his business on a 30-day net cash basis and pay all his obligations when they are due.

Sec. 34. NAC 426.300 is hereby amended to read as follows:

426.300 1. The Bureau will furnish to each vending facility equipment that is suitable for the facility. The Bureau will assume responsibility for all the normal repair and replacement of that equipment.

2. If the Bureau determines that it is necessary or appropriate, the Bureau will:

(a) Replace equipment located at a vending facility, if money is available in the Business Enterprise Account for the Blind.

(b) Provide additional equipment at a vending facility, if money is available in the Business Enterprise Account for the Blind.

(c) Provide written authorization to an operator *or trainee* to purchase equipment specified in the authorization.

3. An operator *or trainee* shall not add to, modify, remove or replace any equipment without the written consent of the Bureau.

Sec. 35. NAC 426.305 is hereby amended to read as follows:

426.305 An operator *or trainee* shall assume responsibility for the daily maintenance of the equipment furnished by the Bureau. The operator *or trainee* shall pay for any repairs that result from his neglect or abuse of the equipment.

Sec. 36. NAC 426.326 is hereby amended to read as follows:

426.326 1. An operator *or trainee* shall obtain the items of merchandise, accessories and supplies that are necessary to begin operation of his vending facility. An operator *or trainee* shall

deduct the value of those items of merchandise, accessories and supplies as a business expense if the deduction will not result in a negative balance in his net proceeds. Any amount that is not deducted must be shown as an asset on the monthly balance sheet maintained by the operator *or trainee* until it is liquidated.

2. An operator *or trainee* shall obtain items of merchandise, accessories and supplies in quantities that are sufficient to ensure the continued operation of his vending facility.

3. On an annual basis and at any other time prescribed by the ~~[Chief,]~~ *Administrator or his designee*, an operator *or trainee* shall conduct a physical inventory of the items of merchandise, accessories and supplies that he has in his possession for resale, and record the results of the inventory in his books and records of account. A copy of the results of the inventory must be included with the monthly report that the operator *or trainee* is required to submit to the Bureau pursuant to NAC 426.255.

Sec. 37. NAC 426.330 is hereby amended to read as follows:

426.330 Each operator *or trainee* shall acknowledge the receipt of the equipment, accessories and initial stock of merchandise furnished by the Bureau. The Bureau will maintain a record of any changes to those items and will provide the operator *or trainee* with a copy of such a record. Each record must be signed and dated by an authorized representative of the Bureau.

Sec. 38. NAC 426.335 is hereby amended to read as follows:

426.335 1. Each operating agreement must specify the goods and services that may be sold at the vending facility covered by the agreement.

2. The goods and services offered at a vending facility may be dispensed automatically or manually and may be prepared on or off the premises.

3. Goods and services must not be sold, offered for sale or dispensed unless they have been approved in writing by the ~~{Chief.}~~ *Administrator or his designee.*

Sec. 39. NAC 426.345 is hereby amended to read as follows:

426.345 1. Each operator ~~{}~~ or *trainee, or* a person designated by the operator ~~{}~~ or *trainee,* and an authorized representative of the Bureau shall conduct a physical inventory of all equipment, accessories and merchandise of a vending facility if:

- (a) The operator *or trainee* is transferred or promoted to another location;
- (b) The operator *or trainee* resigns from the program for vending facilities administered by the Bureau;
- (c) The operator surrenders his license to the Bureau; or
- (d) The operating agreement expires and is not renewed, and a final settlement between the operator and the Bureau is necessary.

2. If an operator *or trainee* refuses to participate in the inventories required by subsection 1, or refuses to designate a representative for such purpose, the Bureau will appoint an independent person to represent the operator ~~{}~~ or *trainee.* All equipment and accessories furnished by the Bureau must be counted and reconciled with the master inventory maintained by the Bureau.

3. The former operator *or trainee* and the new operator *or trainee* or the Bureau shall negotiate, with the assistance of the staff of the Bureau, the value of the equipment, accessories and merchandise of a vending facility.

Sec. 40. NAC 426.360 is hereby amended to read as follows:

426.360 The operator *or trainee* shall not cause or allow a lien, a claim or any other encumbrance to be placed on his vending facility or any of its equipment, accessories, merchandise, supplies or other assets.

Sec. 41. NAC 426.365 is hereby amended to read as follows:

426.365 Each operator *or trainee* shall, subject to the approval of the ~~Chief~~

Administrator or his designee:

1. Employ and compensate such employees as are necessary for the effective and efficient operation of the vending facility.
2. Employ and compensate a relief operator to ensure the continuous operation of the vending facility during an absence of the operator ~~H~~ *or trainee*.
3. To avoid unnecessary and excessive costs, limit the number of persons that he employs and their hours of employment and compensation. Compensation of these employees must not exceed the prevailing wage which is paid to employees who have similar duties in the geographic area of the vending facility.
4. Terminate the employment of any person whose continued employment is detrimental to the operation of the business.
5. Upon request, provide to the Bureau a written description of the duties of each employee.
6. Conduct his business in a manner that satisfies his customers.
7. Avoid any practices that are inconsistent with this section.
8. Except for supervision or management that the Bureau is required to provide, make all decisions concerning the management and daily operations of his vending facility.
9. Maintain a clean appearance and ensure that his employees maintain a clean appearance.

Sec. 42. NAC 426.383 is hereby amended to read as follows:

426.383 1. The Bureau will pay each licensed operator not less than ~~[\$5,000]~~ *\$7,000* annually as a retirement income benefit if:

- (a) A majority of the Nevada Committee of Blind Vendors approves the payment; and
- (b) The Bureau determines that money for the payment is available in the Business Enterprise Account for the Blind.

2. The Bureau, in consultation with the Nevada Committee of Blind Vendors, will develop policies and procedures to determine:

- (a) The eligibility of an operator to receive the retirement income benefit pursuant to this section; and
- (b) The amount of money to be paid to an operator who is eligible to receive a retirement income benefit pursuant to this section.

Sec. 43. NAC 426.387 is hereby amended to read as follows:

426.387 1. The Bureau will make available not less than ~~[\$10,000]~~ **\$12,500** annually for each operator of a vending facility for the purpose of reimbursing each operator for health care costs that are not paid by a third-party insurer if:

- (a) A majority of the Nevada Committee of Blind Vendors approves the amount to be made available; and
- (b) The Legislature appropriates money for such a purpose.

2. The Bureau, in consultation with the Nevada Committee of Blind Vendors, will establish policies and procedures relating to:

- (a) The eligibility of an operator to receive a reimbursement for health care costs pursuant to this section; and
- (b) The process the Bureau and such an operator will follow for reimbursement of health care costs pursuant to this section.

Sec. 44. NAC 426.390 is hereby amended to read as follows:

426.390 1. Except as otherwise provided in subsection 2, an operator may take not more than 30 calendar days of vacation each calendar year. ~~[He]~~ *The operator* shall notify the Bureau and provide assurance that the operation of the vending facility will continue under the guidance of a qualified relief operator. The operator may report the wages which he pays to the relief operator as a business expense.

2. The ~~[Chief]~~ *Administrator or his designee* may, if he determines that special circumstances exist, authorize additional leave of absence.

Sec. 45. NAC 426.395 is hereby amended to read as follows:

426.395 An operator must be ~~[physically present at the vending facility for a minimum of 6 hours per day, unless the operator has received prior approval from the Chief to be physically present at the vending facility for fewer than 6 hours per day.]~~ *actively involved in the operation of the vending facility as prescribed in the operating agreement for the vending facility.*

Sec. 46. NAC 426.400 is hereby amended to read as follows:

426.400 1. The Bureau will assist each operator in the efficient and effective management of each vending facility.

2. The Bureau will provide to each operator of a vending facility managerial services concerning marketing, merchandising, pricing, maintenance of records, preparing reports, supervising personnel and other business procedures.

3. The Bureau will:

(a) Evaluate the performance of each operator ~~[each quarter]~~ *annually* or more frequently if necessary and determine whether any further business training is necessary;

(b) Submit to the ~~[Chief]~~ *Administrator or his designee* a report of the findings of each evaluation; and

(c) Include in each report recommendations for additional business training or other necessary actions.

Sec. 47. NAC 426.416 is hereby amended to read as follows:

426.416 1. A person who is licensed to operate a vending facility may submit a written request to the ~~{Chief}~~ *Administrator or his designee* for an administrative review of a complaint if the licensee:

(a) Has a legitimate grievance with any action of the Bureau in the operation or administration of the program for vending facilities; and

(b) Has not resolved the grievance through informal negotiations with an officer of the Bureau.

2. Not later than 30 days after the occurrence of the action that is the cause of the grievance of the licensee, a request for an administrative review must be mailed by registered or certified mail, return receipt requested, to the ~~{Chief}~~ *Administrator or his designee*.

3. A request for an administrative review must include:

(a) The date of the occurrence of the action which is the cause of the grievance of the licensee;

(b) A statement of the complaint, including each issue that the licensee considers relevant to the complaint;

(c) A statement of each resolution of the complaint offered by the licensee;

(d) Citations to the statutes or regulations, if any, which pertain to the complaint;

(e) A statement which supports the position of the licensee;

(f) The mailing address and telephone number of the licensee; and

(g) The signature of the licensee and the date of his signature.

Sec. 48. NAC 426.420 is hereby amended to read as follows:

426.420 The ~~{Chief}~~ *Administrator or his designee* shall conduct an administrative review at a time and place which is reasonable for the parties. Unless otherwise scheduled to accommodate the licensee, the ~~{Chief}~~ *Administrator or his designee* shall conduct an administrative review within 10 days after the ~~{Chief}~~ *Administrator or his designee* receives a request for an administrative review.

Sec. 49. NAC 426.430 is hereby amended to read as follows:

426.430 1. Not later than 15 days after an administrative review, the ~~{Chief}~~ *Administrator or his designee* shall issue a written decision, including his findings of fact and conclusions of law concerning the complaint and any appropriate orders.

2. The Bureau will mail the written decision to the licensee by registered or certified mail, return receipt requested, or a representative of the Bureau may personally deliver the decision to the licensee and read it to him. If the decision is personally delivered to the licensee, the licensee shall date and sign a copy of the decision as an acknowledgment of the receipt.

3. The ~~{Chief}~~ *Administrator or his designee* shall mail a copy of the decision to each member of the Nevada Committee of Blind Vendors.

Sec. 50. NAC 426.500 is hereby amended to read as follows:

426.500 *1.* A licensee *or the Bureau* may appeal the final decision of a hearing officer and request judicial review pursuant to NRS 233B.130 to 233B.150, inclusive. ~~{or}~~

2. A licensee may, in lieu of appealing the final decision of a hearing officer pursuant to NRS 233B.130 to 233B.150, inclusive, request arbitration pursuant to 34 C.F.R. Part 395.13 ~~{H}~~ not later than 20 days after service of the final decision of the hearing officer.

Sec. 51. NAC 426.027 is hereby repealed.

TEXT OF REPEALED SECTION

426.027 “Chief” defined. “Chief” means the Chief of the Bureau.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R228-05

The Bureau of Service to the Blind of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation adopted regulations assigned LCB File No. R228-05 which pertain to chapter 426 of the Nevada Administrative Code on March 10, 2006.

Notice date: 2/8/2006
Hearing date: 3/10/2006

Date of adoption by agency: 3/10/2006
Filing date: 5/4/2006

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

The Nevada Committee of Blind Vendors initially proposed many of the changes to this regulation, especially the set-aside dollar amounts. Notices of a workshop were placed in the Reno Gazette Journal and the Las Vegas Review Journal on November 11, 2005. Notices of intent to adopt regulation were placed in the Reno Gazette Journal and the Las Vegas Review Journal on February 8, 2006. Both notices were sent to all businesses regulated by this regulation, including the Nevada Committee of Blind Vendors, in the format requested by the business owner; regular font, large font or Braille. Both notices were also sent to the members of the Nevada State Rehabilitation Council. The notices were posted on the public website of the Department of Employment, Training and Rehabilitation. There were no responses, either written or verbal, at the workshop or at the public hearing relating to these proposed regulations. There was public comment at the public hearing on the proposed fair hearing process, however, the fair hearing process is not part of these proposed regulations. A future public hearing will be held regarding the fair hearing process. A copy of this summary may be obtained by calling the Rehabilitation Division at (775) 687-1900 or by writing to 1370 So. Curry Street, Carson City, Nevada 89703-5146.

2. The number of persons who:

- (a) Attended workshop and hearing:** 11
- (b) Testified at workshop and hearing:** 1
- (c) Submitted written comments to the agency:** 1

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Many of the changes to this regulation were initially proposed by the Nevada Committee of Blind Vendors. The notices of workshop, public hearing and the proposed regulation were sent to all blind vendors in the format they request; normal font, large font, or Braille. There were no responses, either written or verbal, at the workshop or at the public hearing on these proposed regulations. There was public comment at the public hearing on the proposed fair

hearing process, however, the fair hearing process is not part of these proposed regulations. A future public hearing will be held regarding the fair hearing process. A copy of this summary may be obtained by calling the Rehabilitation Division at (775) 687-1900 or by writing to 1370 So. Curry Street, Carson City, Nevada 89703-5146.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted without any change to the proposed LCB draft of the regulation. It was adopted without change as there were no comments.

5. The estimated economic effect of the adopted regulation on the businesses that it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects: and

(b) Both immediate and long-term effects.

a. The regulation does not impose any adverse economic effect upon businesses it regulates. There is a minor benefit to businesses in the reduction of set-aside money based upon the potential for increased amount of net profit of each individual business. The set aside is based on a sliding scale that makes forecasting immediate and long-term benefits difficult due to the variable income of the businesses.

b. There is no economic impact on the public, either immediate or long-term.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency.

7. A description of any regulations of other state or government agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

This regulation does not overlap or duplicate regulations of other state or federal agencies.

8. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

This regulation does not include provisions that are more stringent than a federal regulation.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide a new fee or increase an existing fee.